



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Stonehaus Realty  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, OLC, FFT

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) pursuant to section 46;
- an order for the landlord to comply with the Act, the Residential Tenancy Regulation (the Regulation) and/or tenancy agreement, under section 62; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 10:03 A.M. to enable the landlord to call into this teleconference hearing scheduled for 9:30 A.M. The landlord did not attend the hearing. Tenants JR and BB (the tenant), attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenants and I were the only ones who had called into this teleconference.

At the outset of the hearing the tenants affirmed they understand it is prohibited to record this hearing.

The tenant submitted into evidence the tenancy agreement signed on February 15, 2019 indicating the landlord's agent address for service and one email received from the landlord's agent in May 2020 indicating the landlord's agent current address for service (the current address is recorded on the cover page of this decision).

I accept the tenant's testimony that the landlord was served with the application and evidence (the materials) by registered mail on April 15, 2021 sent to the landlord's agent current address for service, in accordance with section 89(1)(c) of the Act (the tracking number is recorded on the cover of this decision).

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the landlord is deemed to have received the materials on April 20, 2021, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

### Preliminary Issue- Unrelated Claims

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the 10 day notice to end tenancy for unpaid rent and the continuation of this tenancy is not sufficiently related to any of the tenants' other claims to warrant that they be heard together.

The tenants' other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the notice. I exercise my discretion to dismiss all of the tenants' claims with leave to reapply except cancellation of the notice to end tenancy which will be decided upon.

### Issues to be Decided

Are the tenants entitled to:

1. Cancellation of the Notice?
2. An authorization to recover the filing fee?

### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below. I explained rule 7.4 to the attending party; it is their obligation to present the evidence to substantiate the application.

The tenant affirmed the tenancy started on February 15, 2020. Monthly rent is \$2,300.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$1,150.00 was collected and the landlord holds it in trust.

The tenant stated she received the Notice on April 07, 2021. The tenant submitted this application on April 09, 2021.

A copy of the April 07, 2021 notice was submitted into evidence. It indicates the tenants were in arrears of \$2,300.00 due on April 01, 2021. The effective date is April 22, 2021.

### Analysis

The tenant received the Notice on April 07 and filed the application to dispute it on April 09, 2021. I find the tenants' application was submitted by the five-day deadline to dispute the Notice, in accordance with section 46(4)(b) of the Act.

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on a balance of probabilities, that the notice issued to end tenancy is valid. This means that the landlord must prove, more likely than not, that the facts stated on the notice to end tenancy are correct:

#### 6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. **However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.**

(emphasis added)

Since the landlord has not attended the hearing or presented any evidence, I find that the landlord has failed to satisfy its burden of proving the validity of the Notice.

Accordingly, the Notice dated April 07, 2021 is cancelled and of no force or effect. This tenancy will continue in accordance with the Act.

As the tenants were successful in this application, I find the tenants are entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The Notice dated April 07, 2021 is cancelled and of no force or effect. This tenancy will continue in accordance with the Act.

Pursuant to section 72(2)(a) the tenants are authorized to deduct \$100.00 from the next rent payment to recover the filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 13, 2021

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Residential Tenancy Branch